

POLICY

Upon request from the juvenile court, the assigned caseworker must assist the court in determining if a juvenile must be tried in the same manner as an adult.

Upon request from the Circuit court, the assigned caseworker must complete a pre-sentence investigation for a youth that has been convicted of a "specified juvenile violation" through a designated or automatic waiver proceeding that does not require an adult sentence to be imposed.

PURPOSE

To determine whether or not it is in the best interests of the public and for the protection of the public security that the juvenile be required to stand trial as an adult offender.

To review the facts of the case and make a recommendation to the court for sentencing the juvenile as a result of automatic waiver procedures.

**WAIVER
PROCEEDINGS**

The prosecutor has two waiver options within the Family Division of Circuit Court, which may result in a youth being tried in the same manner as an adult. A third option is also available for the prosecutor to initiate automatic waiver proceedings.

Traditional Waiver

The prosecutor may file a motion in the Family Division of Circuit Court to waive delinquency jurisdiction to the criminal jurisdiction of circuit court for a youth who is 14-16 years of age and accused of committing a felony. There are two phases to the traditional waiver proceedings:

1. Whether there is probable cause that the juvenile committed a felony.
2. Whether it is in the best interests of the juvenile and the public to grant a waiver of jurisdiction.

The court may request a waiver recommendation report from the Department of Human Services (DHS), see Waiver Recommendation Report for requirements.

Traditional Waiver Sentencing

If a youth is waived and convicted, the youth must be sentenced as an adult.

Designated Waiver

The prosecutor may:

- Designate a case for trial in the Family Division in the same manner as an adult if a petition alleges that the youth committed a specified juvenile violation. A specified juvenile violation includes:
 - Burning a dwelling house, MCL 750.72.
 - Assault with intent to commit murder, MCL 750.83.
 - Assault with intent to maim, MCL 750.86.
 - Assault with intent to rob while armed, MCL 750.89.
 - Attempted murder, MCL 750.91.
 - First-degree murder, MCL 750.316.
 - Second-degree murder, MCL 750.317.
 - Kidnapping, MCL 750.349.
 - First-degree criminal sexual conduct, MCL 750.520b.
 - Armed robbery, MCL 750.529.
 - Carjacking, MCL 750.529a.
 - Robbery of a bank, safe, or vault, MCL 750.531.
 - Assault with intent to do great bodily harm, MCL 750.84, if armed with a dangerous weapon, MCL 712A.2(a)(1)(B), MCL 600.606(2)(b), MCL 764.1f(2)(b).
 - First-degree home invasion, MCL 750.110a(2), if armed with a dangerous weapon.
 - Escape or attempted escape from a medium- or high-security facility operated by DHS or a county juvenile agency, or from a high-security facility operated by a

private agency under contract with DHS or a county juvenile agency, MCL 750.186a.

- Possession of 1,000 grams or more of a Schedule 1 or 2 narcotic or cocaine, MCL 333.7403(2)(a)(i).
- Manufacture, creation, or delivery of, or possession with intent to manufacture, create or deliver, 1,000 grams or more of a Schedule 1 or 2 narcotic or cocaine, MCL 333.7401(2)(a)(i).
- An attempt, (MCL 750.92), conspiracy (MCL 750.157a), or solicitation (MCL 750.157b), to commit any of the above crimes.
- Any lesser-included offense of a specified juvenile violation or any other offense arising out of the same transaction as a specified juvenile violation, if the juvenile is charged with a specified juvenile violation.
- Request that the Family Division conduct a hearing to determine if the best interests of the youth and the public would be served by trying the youth in the Family Division as an adult if the petition alleges that the youth committed an offense that is NOT a specified juvenile violation. See Waiver Recommendation Report.

Designated Waiver Sentencing

Note: If a youth is convicted through a designated proceeding, the court may enter a juvenile disposition, an adult sentence determined by the court to serve the best interests of the public or a blended sentence that delays an adult sentence and affords the youth an opportunity to rehabilitate.

Pre-Sentence Investigation Report

Prior to the sentencing hearing, the assigned caseworker must complete a DHS-201, Pre-Sentence Investigation Report, as outlined in Pre-Sentence Investigations.

Automatic Waiver

A prosecutor may file a complaint and warrant in the criminal division of Circuit Court to initiate automatic waiver proceedings

when a juvenile who is age 14-16 is alleged to have committed a specified juvenile violation.

Automatic Waiver Sentencing

Note: If a youth is convicted for any of the following specified juvenile violations, the youth must be sentenced as an adult:

- Burning a dwelling house, MCL 750.72.
- Assault with intent to commit murder, MCL 750.83.
- Assault with intent to maim, MCL 750.86.
- Attempted murder (MCL 750.91) or conspiracy (MCL 750.157a) or solicitation to commit murder (MCL 750.157b).
- First-degree murder, MCL 750.316.
- Second-degree murder, MCL 750.317.
- Kidnapping, MCL 750.349.
- First-degree criminal sexual conduct, MCL 750.520b.
- Armed robbery, MCL 750.529.
- Carjacking, MCL 750.529a.

Exception: A youth convicted of first-degree murder, conspiracy to commit murder, felony murder, aiding and abetting first-degree murder or certain repeat non-homicide cases subject to mandatory life imprisonment without parole, cannot have the adult sentence of mandatory life imprisonment without the possibility of parole imposed if the youth was under the age of 18 at the time of the offense.

If the youth is convicted of any other specified juvenile violation, the court must either hold a juvenile sentencing hearing to sentence the youth as an adult or place the youth on probation and commit the youth to DHS.

Exception: If the youth, the youth's attorney and the prosecuting attorney agree that it is NOT in the best interest of the public to sentence the youth as an adult, the court may waive the juvenile sentencing hearing, place the youth on probation and commit the youth to DHS.

Pre-Sentence Investigation Report

Prior to the juvenile sentencing hearing, the assigned caseworker must complete a DHS-201, Pre-Sentence Investigation Report, as outlined in Pre-Sentence Investigations.

**WAIVER
RECOMMENDATION
REPORT**

The juvenile court may request a waiver recommendation report from the Department of Human Services (DHS) prior to determining if the youth will be waived to criminal court under traditional waiver proceedings or designated waiver proceedings when the petition alleges that the youth committed an offense that is NOT a specified juvenile violation. To prepare a fact-based analysis of the issues under consideration and develop an appropriate waiver recommendation:

- Obtain an information release (DHS-1555-CS) and review the youth's:
 - Delinquency, children's protective services, foster care, and/or adoption records.
 - Arrest report(s).
 - School records including any report cards, special education reports, disciplinary action or academic evaluations.
 - Mental health evaluations and records.
 - Medical evaluations and records.
- Interview the youth's parent(s) or legal guardian(s) regarding the chronology of events before, during and after the arrest, developmental milestones, educational history, emotional disturbances and mental health issues. Determine if the youth's parent(s) or legal guardian(s) want to pursue a competency evaluation.
- Interview the youth regarding the chronology of events before, during and after the arrest. Determine if the youth wants to pursue a competency evaluation.

- Contact the youth's attorney to determine if the youth's attorney plans to request a competency evaluation or has concerns regarding the youth's competency.
- Review the information collected in light of the following criteria (MCL 712A.4(4)):
 - The seriousness of the offense.
 - The culpability of the juvenile in committing the offense. See section on Juvenile Competency.
 - The prior record and character of the ward, physical and mental maturity, and pattern of living.
 - Whether the ward may be amenable to treatment or likely to disrupt the rehabilitation of others.
 - The type of juvenile programs and facilities available and appropriate compared to adult programs and facilities.
 - Whether it is in the best interests of the public and for the protection of the public security that the juvenile be required to stand trial as an adult offender.

JUVENILE COMPETENCY

The Mental Health Code (MCL 330.1001 et seq.) was amended in 2012 to include specific provisions for the determination of juvenile competency to stand trial, effective on March 28, 2013.

Competency is not the same as criminal responsibility; it is the youth's ability to understand the charges and proceedings and the ability to assist the youth's attorney with his or her own defense in a meaningful way. Competence to stand trial in juvenile court may differ from the youth's competence to stand trial in criminal court. The issue of a youth's competency to stand trial may be raised by the court or by motion of a party at any time during the proceeding. If the issue of competency is raised, proceedings must cease until competency has been determined.

The following criteria must be evaluated by the assigned caseworker to determine if the waiver recommendation report should recommend that the court order a competency evaluation for the youth:

- Chronological age - A youth 10 years of age or older is presumed competent to proceed unless the issue of competence is raised by a party. The younger the youth, the more likely the youth is to need a competency evaluation to determine his or her ability to stand trial. A juvenile less than 10 years of age is presumed incompetent to proceed, MCL 330.2062.
- Developmental age - Developmental disabilities or deficits can affect a youth's comprehension and functional abilities, increasing the likelihood that the youth needs a competency evaluation to determine his or her ability to stand trial.
- Intellectual functioning - A low IQ score, cognitive impairment, mental retardation and/or diagnosed learning disability can affect a youth's ability to process information. This increases the likelihood that the youth needs a competency evaluation.
- Mental illness and medication - A youth diagnosed with one or more mental illnesses, who is taking psychotropic medication and/or who meets the criteria for serious emotional disturbance, MCL 330.1208, may have impaired decision-making abilities. This also increases the likelihood that the youth needs a competency evaluation.
- Severity of the charge and consequences - The more severe the charge, the more complex the choices and implications for consequences become for the youth to understand. This factor increases the likelihood that the youth needs a competency evaluation to determine his or her ability to stand trial.

PRE-SENTENCE INVESTIGATION

When a youth age 14 through 16 years of age is committed to a juvenile facility pending trial and is convicted in the circuit court or the Family Division of Circuit Court, the court may request that DHS prepare a pre-sentence investigation report (MCL 771.14a(1)). Staff from the Department of Corrections will also prepare a pre-sentence investigation report for these youth.

Pre-sentence investigations (PSI's) must be conducted by the assigned caseworker upon request of the court of jurisdiction when the youth will be tried as an adult based on automatic waiver procedures (see [JJM 210, Waiver Proceedings & Pre-Sentence](#)

[Investigations](#)). The PSI must be completed by the assigned caseworker within the time frame established by the court. To prepare a PSI report, the assigned caseworker is responsible for the following activities:

- Requesting and obtaining information on the charge from the prosecutor's office.
- Requesting and obtaining Law Enforcement Information Network results.
- Requesting and obtaining a copy of the arresting police officer's and any subsequent law enforcement reports.
- Interviewing the youth, the family, appropriate law enforcement personnel, the victim, the employer or school personnel, or other significant individuals that are identified during the investigation.

PSI REPORT FORMAT

The local office must develop local procedures with the presiding court judge and the adult probation department in that county to establish a PSI request process. The assigned caseworker must use the DHS-201, Pre-Sentence Investigation Report, for completion of the PSI report. The PSI report must be provided to the judge prior to the sentencing hearing. Also, the judge may require a pre-sentence conference, which the assigned caseworker or supervisor must attend.

VICTIM'S RIGHTS

If ordered by the court to do so while preparing the PSI report, the assigned caseworker must give the following notice to the victim (MCL 769.1(3)(a):

- The victim's right to make a written or oral impact statement for use in preparation of the report.
- The address and telephone number of the person who is to prepare the report.

The PSI report and any statement of the victim included in the report must be made available to the youth unless exempted from disclosure by the court.

- The assigned caseworker must determine the following:
 - The amount of financial loss sustained by any victim as a result of the offense.
 - The financial resources and earning ability of the youth.
 - Other factors that the court considers appropriate, and
 - The financial needs of the youth and the youth's dependents.

OPENING A PRE- SENTENCE INVESTIGATION CASE

On the date that the PSI referral is received, the pre-sentence investigation case must be opened on SWSS FAJ until MiSACWIS is live. If the youth has not been committed to DHS at the time of the pre-sentence investigation, use legal status 50 - non-ward with a delinquency petition filed. If the youth is subsequently referred or committed to the department, change the legal status appropriately.

If the youth is not referred or committed to the department at sentencing, the pre-sentence investigation case must be closed when the disposition/sentencing order is received.

RECORD RETENTION

Individual pre-sentence investigation case records must be retained as part of the youth's juvenile justice case record if the youth is subsequently referred or committed to DHS.

If the youth is not referred or committed to the department at sentencing, the pre-sentence investigation case record must be retained solely as a pre-sentence investigation record.

LEGAL AUTHORITY

The Juvenile Facilities Act, 1988 PA 73, as amended, MCL 803.221, et seq.

The Revised Judicature Act of 1961, 1961 PA 236, as amended, MCL 600.606, et. seq.

The Probate Code, 1939 PA 280, as amended, MCL 712A.2d.

The Code of Criminal Procedure, 1927 PA 175, as amended, MCL 769.1.

The Mental Health Code, 1974 PA 258, as amended, MCL 330.2060 et. seq.